

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:LI:POSTF-128845-02
HNAdams

date: June 7, 2002

to: Large & Mid Size Business Division
Attn: Howard Silverman, Revenue Agent

from: Associate Area Counsel (Financial Services)
CC:LM:F:LI

subject: [REDACTED], Inc. & Subsidiaries - Extension of
Statute of Limitations

U.I.L. No. 6501.08-00

This memorandum responds to your request for assistance dated May 22, 2002. This memorandum should not be cited as precedent.

BACKGROUND

For purposes of this response, we understand the facts are as follows.^{1/} During [REDACTED], [REDACTED], Inc. (EIN [REDACTED]) filed a consolidated Federal corporate income tax return as the common parent of an affiliated group of corporations that included itself and its subsidiaries.

The stock of [REDACTED], Inc. was recently purchased by [REDACTED], Inc., which is a member of the [REDACTED] Inc. consolidated group. [REDACTED], Inc. remains in existence, but it is now a member of the [REDACTED] Inc. consolidated group.

ISSUE

Does [REDACTED], Inc. retain authority to waive the statutes of limitations for [REDACTED] for the consolidated Federal corporate income tax return it filed as the common parent of the affiliated group of corporations that included itself and its subsidiaries?

CONCLUSION

¹ Our understanding of the facts is based on information we have received from you.

[REDACTED], Inc. has authority to waive the statute of limitations for [REDACTED] for the consolidated Federal corporate income tax return it filed as the common parent of the affiliated group of corporations that included itself and its subsidiaries.

ANALYSIS

With exceptions not relevant here,^{2/} the consolidated return regulations make the common parent of a group of corporations that file as a consolidated group for a taxable year the sole agent of the members of the group for matters relating to the tax liability for the year. As is relevant here, the regulations provide that

the common parent in its name will give waivers, give bonds, and execute closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, shall be considered as having also been given by each subsidiary.

Treas. Reg. § 1.1502-77(a). Specifically as applies to waivers of the statute of limitations on the assessment and collection of tax, the regulations provide that a waiver given by a common parent "shall be applicable --

(1) To each corporation which was a member of the group during any part of such taxable year, and

(2) To each corporation the income of which was included in the consolidated return for such taxable year, notwithstanding that the tax liability of any such corporation is subsequently computed on the basis of a separate return under the provisions of § 1.1502-75.

Treas. Reg. § 1.1502-77(c). The regulations specify that subsidiaries generally have no authority to act for themselves. Treas. Reg. § 1.1502-77(a).

² The regulations provide that the common parent is not the agent of its subsidiaries for purposes of filing consents under Treas. Reg. § 1.1502-75(a)(1) to be included in a consolidated group, making an election under I.R.C. § 936(e), making an election to be treated as a DISC under Treas. Reg. § 1.992-2 and a change of the annual accounting period pursuant to Treas. Reg. § 1.991-1(b)(3)(ii). Treas. Reg. § 1.1502-77(a).

[REDACTED]

[REDACTED], Inc. is not the common parent of a consolidated group for years after its acquisition by [REDACTED] Inc. as it is now a member of the [REDACTED] Inc. consolidated group. See Rev. Rul. 56-559, 1956-2 C.B. 595 (ruling that two corporations, one owning all the stock of the other, both of which are members of an affiliated group of which another corporation is the common parent, do not constitute a separate affiliated group privileged to file consolidated income tax returns within the meaning and intent of sections 1501 and 1504(a) of the Code). Temporary regulation section 1.1502-77T(a)(3) provides that, if the corporation that is the common parent of a group ceases to be the common parent, whether or not the group remains in existence, a waiver of the statute of limitations with respect to the group given by various other corporations is deemed to be given by an agent of the group. One of the corporations so listed is "[t]he common parent of the group for all or any part of the year to which the * * * waiver applies[.]" Temp. Treas. Reg. § 1.1502-77T(a)(4)(i). As [REDACTED] Inc. was the common parent of the group for [REDACTED], it is deemed to be an agent of the group under Temporary regulation section 1.1502-77T(a) for purposes of consenting to a waiver of the statute of limitations for that year.

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect or if additional facts are developed. If the facts are determined to be incorrect or if additional facts are developed, this opinion should not be relied upon. You should be aware that, under routine procedures that have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary. If we can be of further assistance, you may call the undersigned at (516) 688-1737.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If

[REDACTED]

) disclosure becomes necessary, please contact this office for our views.

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By: _____
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